

**TRANSPORTATION CABINET
Motor Vehicle Commission
(New Administrative Regulation)**

605 KAR 1:131. Procedures.

RELATES TO: KRS 190.058, 190.062

STATUTORY AUTHORITY: KRS 190.020, 190.058, 190.062

NECESSITY, FUNCTION, AND CONFORMITY: KRS 190.058 authorizes the Motor Vehicle Commission to adopt procedures to carry out the functions and duties conferred upon it by KRS Chapter 190. This administrative regulation establishes the proper form of procedure and practice before the Motor Vehicle Commission.

Section 1. Hearings. Hearings shall be conducted as established in this administrative regulation and KRS Chapter 13B. All testimony shall be transcribed.

Section 2. Appearances. A licensee who is a natural person may appear and be heard in person, or with or by a duly appointed attorney. A licensee that is an artificial entity shall be represented only by an attorney licensed or authorized to practice in Kentucky.

Section 3. Additional Hearings. The commission may, on its own motion, prior to its determination, require an additional hearing. Notice to all interested parties establishing the date of the hearing shall be given in writing by the executive director.

Section 4. Briefs. Briefs may be filed as a matter of right. All briefs shall be concise and shall be typewritten or printed. The time allowed for filing briefs shall be designated by the hearing officer.

Section 5. Continuances. Continuances shall be granted if a continuance is in the interest of justice and if requested at least forty-eight (48) hours in advance of the hearing date.

Section 6. Depositions. Depositions may be taken only when authorized by the hearing officer. The provisions of the Civil Rules governing the taking of depositions shall be applicable.

Section 7. Except as otherwise provided by KRS Chapter 13B, the rules of evidence governing civil proceedings in the courts of the Commonwealth of Kentucky shall govern hearings before the commission, unless the hearing officer relaxes the rules if the ends of justice will be better served by so doing.

(1) Judicial notice.

(a) If called to the attention of the hearing officer, judicial notice may be taken of any matter situated in the files of the commission, the Department of Revenue or the Transportation Cabinet, any action pending that involves the commission or other matters of which a court of Kentucky may take judicial notice.

(b) A brief statement recognizing the matter shall be made in the transcript by the hearing officer.

Section 8. Ex Parte Contacts. A person shall not have ex parte contact with any member of the commission regarding any matter pending before the commission for review prior to final decision. A person in violation of this Section shall be identified on the record to the commis-

sion and any information provided through the ex parte contact shall be stricken from the commission's records and disregarded.

Section 9. Service of Motions, Pleadings. Copies of all motions and pleadings shall be served upon all interested parties, in addition to filing the required copies before the commission.

Section 10. Notices. A notice of a hearing sent by certified mail to the business address of the licensee shown on the latest application for a license shall be sufficient notice.

Section 11. Subpoenas and Subpoena Duces Tecum. (1) The party desiring a subpoena shall make application at least five (5) days before the hearing date with the executive director of the commission.

(2) The application shall be in writing, and shall state the name and address of each witness required.

(3) If evidence other than oral testimony is required, such as documents or written data, the application shall establish the specific matter to be produced and sufficient facts to indicate that the matter is reasonably necessary to establish the cause of action or defense of the applicant.

Section 12. Costs of Hearing. (1) If the commission, by issuance of a final order, finds that a violation has been committed by a licensee, or upholds the recommendation of the hearing officer in a matter involving an applicant for a motor vehicle dealer license, the commission may assess to the licensee or the applicant the fee charged to the commission for the transcription of the record and the fee charged by the hearing officer.

(2) If the hearing officer or the commission finds that the hearing has been held as a result of an allegation or charge lacking substantial merit, or if the hearing officer or commission finds that a party to the hearing has materially delayed or increased the cost of the hearing through its actions, the commission shall assess to the party bringing the allegation or causing the delay, the fee charged to the commission for transcription of the record and the fee charged by the hearing officer.

(3) The fee assessed for the transcription of the record and for the hearing officer shall be the actual costs charged to the commission for that particular hearing, and may be assessed in addition to any fine levied by the commission.

DOUG DOTSON, Chairman

APPROVED BY AGENCY: September 15, 2021

FILED WITH LRC: September 20, 2021 at 12:06 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2021 at 9 a.m. local time at the Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601. In the event that in-person meetings are not available, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link: <https://us02web.zoom.us/j/82520305441>, or by telephone at 19292056099, your meeting I.D. to join in is 825 2030 5441. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a

transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on December 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below:

CONTACT PERSON: Suzanne Baskett, Executive Staff Advisor, Kentucky Motor Vehicle Commission, 200 Mero Street, Frankfort, Kentucky 40601, phone (502) 573-1000, fax (502) 227-8082, email Suzanne.Baskett@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Suzanne Baskett

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the practice and procedures used by the Commission in administrative hearings.

(b) The necessity of this administrative regulation: KRS 190.058 requires the Motor Vehicle Commission to conduct hearings on certain matters.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation sets forth the practice and procedures to be used in administrative hearings.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This regulation sets forth the practice and procedures to be used in administrative hearings.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

(a) How the amendment will change the existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effect of administration of the statutes:

(3) List the types and numbers of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all individuals or businesses who participate in administrative hearings before the Commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees or other entities involved in administrative hearings before the Commission will be required to follow the procedures contained in the regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost to each of the identified entities cannot be reasonably ascertained because each administrative hearing varies depending on the issues presented.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with the regulation will be allowed to participate in administrative hearings before the Commission.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: No known costs.

(b) On a continuing basis: There are on-going costs related to administration of the licensing of automotive mobility dealers and enforcement of the regulations. This cost will vary depending on the issues related to each individual dealer.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: Application fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: 605 KAR 1:215 establishes the associated fees and the Commission does not anticipate a need for any additional or increased fees or funding related to administration of this regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. It does not establish or increase any fees.

(9) TIERING: Is tiering applied? No.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Motor Vehicle Commission.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 190.058, 190.073.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Revenue to be generated is unknown because the Commission cannot determine how many administrative hearings it will conduct.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Revenue to be generated is unknown because the Commission cannot determine how many administrative hearings it will conduct.

(c) How much will it cost to administer this program for the first year? The cost of administering this program in the first year is unknown as it will depend upon the number of hearings and the issues which arise with regard to each hearing.

(d) How much will it cost to administer this program for the subsequent years? The cost of administering this program in the first year is unknown as it will depend upon the number of hearings and the issues which arise with regard to each hearing.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: